

## **Common Questions and Answers About Sections 105 and 105c Schools of Choice**

**Note:** The following Q&A has been updated as of January 3, 2003

**Any additional questions that you might have can be referred to Dr. Arthur T. Vrettas at (517) 241- 2732 or [vrettasa@michigan.gov](mailto:vrettasa@michigan.gov).**

### **Introduction:**

The Schools of Choice program was established to provide additional options to parents in the education of their children. Under the program, if a parent feels their child will benefit by attending a participating school district outside their home district, and if there is room, then they should be allowed this choice.

Under Schools of Choice there are basically three different types. First there is intra-district schools of choice. In this case a parent requests the placement of their child in a different school within the home district. This is a local school district process and the state has no jurisdiction.

The second type of Schools of Choice is called Section 105. The name is derived from the section of the State School Aid Act that describes the program and its process. Under Section 105, a pupil may transfer from one local school district to another local district within the same county school or intermediate school district (ISD). Questions and Answers regarding this process follow this section.

The third type of Schools of Choice is called Section 105c. Like the previous type of program, it derives its name from the section of the State School Aid Act describing it. Under Section 105c, a pupil may transfer from one local school district in one ISD to another local school district in a contiguous ISD. Questions and Answers regarding this process follow this section.

**General Questions:**

- Q1. Are all school districts required to participate in the Schools of Choice Program?
- A1. NO. The state's Sections 105 & 105c Schools of Choice programs are voluntary. Each school district chooses for itself whether or not to participate.
- Q2. I have found a school outside my ISD that will accept my child. Can she attend under Section 105 Schools of Choice?
- A2. The appropriate section of the State School Aid Act that would apply in this situation would be 105c. and if the two districts involved are in contiguous ISDs. If the district in which you wish to enroll your child is participating in 105c, you may apply. Otherwise, your child may attend but the district will not generate state aid unless your resident district provides permission.
- Q3. There are no Schools of Choice in my area, what other options do I have?
- A3. You may want to look into the local Public School Academies and/or private schools. In addition you may petition your local school district to release your child to a neighboring school district of your choice, or you may pay tuition to a neighboring school district for your child to attend or you may home school.
- Q4: My son is presently in a Section 105 School of Choice. If we withdraw him for this school year is he forbidden to apply again to the same school of choice?
- A4: NO. He can reapply but he will not be given preference.
- Q5: Can our school refuse to release our child to a School of Choice school district in our ISD?
- A5: If the school of choice school is a Section 105 and/or 105c School of Choice, no release from the resident district is required.

Q6: Where can I get a list of Schools of Choice in my ISD area?

A6: Your local Intermediate School District should have a complete listing of the Schools of Choice in your area. If you are unable to get the listing from them, feel free to contact Dr. Arthur T. Vrettas at the Michigan Department of Education for assistance.

Q7: If my local school district decides not to participate in either schools of choice programs, can they refuse to release my child to a local school district that is participating?

A7: NO. A local school district has no control over another local school district's decision to operate a schools of choice program and accept nonresident pupils. As long as the other local school district complies with all of the Section 105 & 105c provisions, it may accept, enroll, and count nonresident pupils in membership without the consent of the local school district in which the pupils reside.

### **Process Specific Questions:**

Q1: If a local school district determines that it will not accept nonresident pupils under the provisions of Section 105 and/or 105c, can it continue to accept some nonresident pupils as tuition pupils or with a release from the home school district?

A1: YES. A district that opts not to participate in schools of choice under Sections 105 and/or 105c continues to operate under all of the other provisions of the State School Aid Act; that is, a nonresident pupil can be enrolled in the district but must be released from the resident district in order to be counted in membership and generate state aid.

Q2: We are a Section 105 - School Choice building and have a family that is moving out of the local school district but will be remaining in the ISD area and wants to keep their children at our school. What procedures should we follow?

- A2: The family should fill out an application for non-resident admission under Section 105. Since the children were in attendance at your school last year, they will have preference in the selection process and should be kept.
- Q3: If a local school district “opts out” of Sections 105 and/or 105c schools of choice, can the district continue to participate in a cooperative education program with other local school districts?
- A3: YES. A local school district can participate in a cooperative education program with other local school districts regardless of whether it opts in or out of Sections 105 and/or 105c schools of choice.
- Q4: May a local school district decide to operate a schools of choice program even if no other district around it accept nonresident pupils?
- A4: YES. Opting into Choice is an individual local school district decision.
- Q5: Can a district stop accepting applications once the number received reaches the number of spaces available?
- A5: NO. A district is prohibited from turning away applications prior to the published deadline, regardless of the number received.
- Q6: Must a local school district enroll all nonresidents who submit applications by the deadline date?
- A6: The answer depends upon the approach taken by the local school district. If the local school district chose unlimited enrollment then the answer is YES. If, however, the local school district offered only limited enrollment opportunities, then the answer is NO. In this case, if the number of applications exceeds the number of spaces specified, the district must use a random draw system to select the applicants who will be offered enrollment.

- Q7: May a local school district limit the applications it will accept to a certain building, grade level or specialized program?
- A7: YES. A district that opts to have a Section 105 and/or 105c schools of choice program may limit the program to specific grade levels, specialized programs, and/or specific buildings.
- Q8: May a local school district specify that it will accept applications from nonresident pupils for general education classes only, and thereby, limit applications to non-special education pupils?
- A8: NO. General education is not a specialized program and special education is a “supplemental service” not a program. Therefore, a local school district may not deny an application from a special education pupil.
- Q9: Our local school district is participating in both Section 105 and Section 105c. When we do the random draw, do we need to keep the applications separate for each program?
- A9: NO. If you are participating in both programs, you may co-mingle applications for selection purposes.
- Q10: Our local school district presently participates in a local ISD mutual agreement. Can we participate in Section 105c as well?
- A10: YES.
- Q11: What if a nonresident pupil with special education needs is selected under schools of choice and the enrolling local school district does not have services in place to meet the needs of that pupil. Can the pupil be refused enrollment?

A11: Under Section 105 the answer is NO. A pupil cannot be refused enrollment based upon a mental or physical disability. Furthermore, the enrolling local school district becomes responsible for assuring that the pupil is provided with appropriate educational services.

Under Section 105c, because the funding and procedures for special education differ from ISD to ISD, the law specifies:

(18) In order for a district or intermediate district to enroll pursuant to this section a nonresident pupil who resides in a district located in a contiguous intermediate district and who is eligible for special education programs and services according to statute or rule, or who is a child with disabilities, as defined under the individuals with disabilities education act, title VI of Public Law 91-230, **the enrolling district shall have a written agreement with the resident district of the pupil for the purpose of providing the pupil with a free appropriate public education. The written agreement shall include, but is not limited to, an agreement on the responsibility for the payment of the added costs of special education programs and services for the pupil.** (The section in bold print was highlighted as part of this question and answer website and is not in bold print in the law).

Q12: Does the enrolling local school district have to develop a new special education program to meet the needs of a student with disabilities?

A12: NO. A local school district does not have to develop a new program. However, the local school district is responsible for developing and implementing an IEP for the pupil and placing the pupil in the appropriate program. The program may be within a different local school district in the ISD or in an ISD-run program.

Q13: Is the enrolling local school district, under Sections 105 and 105c schools of choice programs, responsible for providing transportation for the nonresident pupils?

- A13: Only if the nonresident pupil is a special education pupil *and the IEP indicates special transportation, then that transportation must be provided*. Otherwise, the only other responsibility of the local school district is to provide information about transportation options.
- Q14: If the local school district accepts a pupil from a lower foundation local school district, can the enrolling local school district charge tuition for the difference between the foundation amounts?
- A14: NO. A local school district is prohibited from charging tuition for Section 105 and 105c schools of choice pupils.
- Q15: With the membership definition using an average of the prior year February count and the current year September count, how much of a foundation allowance will a new choice pupil generate?
- A15: Because of the membership blend, a new pupil will generate 80 % of a foundation allowance the first year the pupil is enrolled in the local school district.
- Q16: Can the enrolling local school district bill the resident district for the other portion of the foundation allowance?
- A16: NO. There can be no billing or tuition charge of any kind for Sections 105 and 105c schools of choice pupils. Keep in mind that, if the pupil is enrolled for the full year, i.e., the pupil is counted in membership in September and again in February, and 20% of the foundation allowance will be paid in the following year. Therefore, each pupil enrolled for a full year will generate a full foundation over the two-year period.
- Q17: Can a local school district refuse to enroll a pupil based upon the age of the applicant?
- A17: YES. A local school district could refuse enrollment if the district determines that the program for which the pupil is applying is not appropriate for the age of the pupil.

Q18: What if the local school district has a resident eight-year old enrolled in a high school level program, and the nonresident applicant is nine years old. Can the local school district refuse to enroll the nonresident based upon the pupil's age?

A18: In that specific instance, the answer is NO. The local school district could not refuse to enroll the nonresident pupil based solely upon the pupil's age. However, if the local school resident eight-year old is admitted after demonstrating a certain level of ability generally required for placement in high school but the nonresident nine-year old pupil has not demonstrated that level of ability, the local school district could refuse enrollment on that basis.

Q19: Now that a local school district has the authority to count a (Section 105 or 105c schools of choice) nonresident pupil in membership without a release, can that pupil be considered a member of the local school district for athletic purposes? That is, do the provisions of Sections 105 and 105c override the athletic association rule that nonresidents must sit out for one semester?

A19: NO. The provisions of Sections 105 and 105c have no effect on the Michigan High School Athletic Association (MHSAA) rules, to which each member high school agreed when they joined the association. Section 105 and 105c schools of choice pupils are still considered nonresident pupils and, as MHSAA member high schools, pupils are ineligible for interscholastic athletics for one full semester.

Q20: In publishing the number of pupils, under the limited enrollment provisions of Sections 105 and 105c, that a local school district will accept in a building, grade level, or specialized program, should the figure reflect a "headcount" or full-time equivalency? (Some specialized programs may be less than full-time.)

A20: Local school districts should specify the number of individual pupils (headcount) it will accept.

Q21: A local school district choosing to accept nonresident pupils under Sections 105 and 105c is required to publish the grades, schools, and special programs for which enrollment may be available. What are the guidelines for proper publishing of this information?

A21: There are no guidelines in statute for the publishing of this information. It is recommended that the district make the information available in such a way that all residents of the affected area have equal access to the information. The local school district should be able to defend its publishing plan as nondiscriminatory.

Q22: Can a local school district accept more pupils than its original (published) number?

A22: YES. Subsection (5) of both Sections 105 and 105c state that a district *may* limit the number of nonresidents it accepts. May being permissive is understood to say a local school district is not required to limit the number.

Q23: Can a local school district accept fewer pupils than its original (published) number?

A23: A local school district can only accept fewer pupils if the number of applications is less than the number of positions available. Furthermore, in that case, all applicants must be offered enrollment.

Q24: Can a local school district that “opts out” of either or both Sections 105 and 105c schools of choice enroll a nonresident pupil without a release from the local school district of residence?

A24: YES. BUT the pupil will not generate state aid! If a nonresident pupil enrolled outside of a Section 105 or 105c program has not been released from the resident local school district and is not part of a cooperative education program, that pupil cannot be counted in membership and will not generate state aid.

Q25: Can a local school district that has either or both Sections 105 and 105c schools of choice in its elementary building enroll nonresident pupils in the high school?

A25: YES. The district can enroll nonresident pupils in a non-schools of choice building. However, in order to count the pupils in membership and generate state aid, the local school district must obtain a release. (If the program is a cooperative education program, there must be a written agreement in place in order to count the pupil in membership.)

Q26: A local school district has either or both Sections 105 and 105c schools of choice in the high school. The pupil has younger elementary age siblings. Must the district enroll the younger pupils even though the elementary building was not designated as a schools of choice building?

A26: NO. A local school district is not required to enroll the siblings in a building, grade level, or program which has not been identified as a schools of choice program. If the local school district chooses to enroll the younger siblings, it must obtain a release in order to count them in membership.

Q27: How does a local school district go about requesting a waiver of one or more requirements under Sections 105 and 105c?

A27: Local school districts must request a waiver in writing in a letter addressed to the Superintendent of Public Instruction at the Department of Education in Lansing (P.O. Box 30008, zip 48909), attention: Dr. Arthur T. Vrettas. The letter must identify the specific item(s) of which the local school district is requesting the waiver, the reason for the request, as well as a contact person and telephone and/or fax number.

Q28: Are board resolutions necessary and/or required?

A28: NO. However, it is recommended that since this is a policy decision, it should be covered by board action.

Q29: If we accept a nonresident pupil under either Section 105 or 105c how long are we required to keep them?

A29: Under subsection 12 of both Section 105 and 105c, as long as a nonresident pupil continues to enroll in and attend school in the local school district, the local school district is required to allow the nonresident pupil to continue to enroll in and attend school until high school graduation. This subsection does not prohibit a local school district from expelling a pupil described in this subsection for disciplinary reasons.

Q30: How often should we take this program before our board for action?

A30: It is recommended that action be taken only on two occasions. First, when a local school district decides to participate (opt in) in either or both Sections 105 and 105c, and, second, if it ever decides to cease participation (opts out).